IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32 (2) (b)
Description of case

Special Appeal No. 29 of 2006

Date of Decision: 18 November 2006

A.F.R. (Approved for Reporting)
~~Not approved for Reporting~~

Date. Initial of Judge

Note: Bench Reader will attach this at the top of first page of the judgment when it is put before the Judge for signature.

HIGH COURT OF UTTARANCHAL AT NAINITAL

Special Appeal No. 29 of 2006

B.H.E.L. Education Management Board,
Sector-I, Ranipur, Haridwar
Through its Secretary .....Appellant

Versus

1. Bikram Singh Chauhan
   S/o Shri Rudra Singh
   P.G.T. Teacher (Drawing),
   Vidya Mandir Inter College,
   Sector-I, Haridwar .....Respondent
2. District Inspector of Schools, Haridwar
3. Shri Virendra Kumar Gupta,
   P.G.T. Teacher (Chemistry),
   Vidya Mandir Inter College Haridwar
4. Shri Shambu Prasad Sundarayal
   P.G.T. Teacher (English),
   Vidya Mandir Inter College, Haridwar
   ..... Proforma Respondents

Deliver of Judgment :-18th November, 2006

Mr. V.K. Kohli senior Advocate assisted by Mr. I.P. Kohli Advocate for appellant.
Mr. Subhash Upadhyay Advocate for respondent No.1.
Sri J.P. Joshi Addl. C.S.C. for respondent No. 2.

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble J.C.S. Rawat, J.

Per Hon'ble J.C.S. Rawat, J.

1. This special appeal under Rules 5 Chapter VIII of the High Court Rules has been filed against the judgment and order dated 22.02.2006 passed by the learned Single Judge of this Court in Writ Petition No.109(S/S)2002 Bikram Singh Chauhan Vs. BHEL Educational Management Board & others, whereby the learned Single Judge has allowed the petition and directed the respondents to consider the promotion of the petitioner.

2. A writ petition bearing No. 109/2002(S/S) was filed before the learned Single Judge by the petitioner-Bikram Singh Chauhan for the following reliefs:-

(i) issue a writ order or direction in the nature of certiorari quashing the order dated 18.08.94 (Annexure IV to the writ petition) and order dated 29.10.1994 (Annexure VI to this writ petition).

(ii) issue writ order or direction in the nature of mandamus directing the respondent no.1 not to take the work as Vice Principal by the respondent no. 3 and 4.

(iii) Issue a writ order or direction in the nature of mandamus directing the respondent no.1 so they may promote and handover the charge to the petitioner as a Vice-Principal of Vidya Mandir Inter College Ranipur Harridwar.

(iv) Issue any other suitable writ order or direction which this Hon'ble Court may deem fit and proper under the circumstances of the case.

(v) Award the costs of the petition to the petitioner.

3. The petitioner-Bikram Singh Chauhan (now respondent No.1 in special appeal) was appointed as P.G. Teacher (Arts) in Vidya Mandir Inter College Ranipur, Haridwar on 07.08.1981. He was confirmed on 20.08.1982 on the post of P.G. Teacher by appellant-B.H.E.L. Education Management Board. Thereafter, the respondent Nos. 3 and 4 (Virendra Kumar Gupta and Shambu Prasad Sundarayal respectively) were appointed as P.G. Teachers in the same institution vide order dated 17.06.1982. The petitioner was promoted on 18.08.1994 to the P.G. Teacher Senior Scale as he had completed 13 years of service. The respondents Nos. 3 and 4 were promoted on the post of vice Principal by the appellant ignoring the claim of the petitioner vide

order dated 18.08.1994. Feeling aggrieved by this, the petitioner-Bikram Singh Chauhan had filed a representation before the competent authority and the same was rejected vide order dated 29.10.1994. Hence, the writ petition was filed before the Court. It was further alleged in the petition that the respondent nos. 3 & 4 should not have been promoted to the post of Vice Principal as they were junior to the petitioner-Bikram Singh Chauhan. The counter affidavit was filed alleging therein that the BHEL Education Management Board is an autonomous body registered under the Societies Registration Act. The institutions run by BHEL Education Management Board, Ranipur, Haridwar are private un-aided Schools. The post of Vice Principal, in the said institution is not a promotional post. It is merely an administrative arrangement to look after various institutions being run by the Institution. It was further pleaded that an interview was conducted to fill up the post of Vice Principal. Bikram Singh Chauhan (petitioner) had appeared in the said interview but he was not selected and hence he cannot have any grievance. The petitioner cannot challenge such selection as he appeared before the interview board without any protest. It was further pleaded in the counter affidavit that the respondent no.3 and 4 are more meritorious than the petitioner. The petitioner is possessed of only M.A. Degree, whereas the respondent no.3 is M.A.(English), L.T., M.Ed., Ph.D. and the respondent no.4 is M.Sc. (Chemistry), B.Ed.

4. After hearing the parties, the learned Single judge had allowed the petition vide order dated 22.02.2006 and held that the appellant-BHEL Education Management Board was not justified to promote the

respondent nos. 3 & 4 as they were junior to petitioner by ignoring his seniority on the post of Vice Principal. The appellant was directed to consider the promotion of the petitioner on the date when juniors to him were promoted.

5. Feeling aggrieved by the said order, the present special appeal has been preferred by the appellant-BHEL Education Management Board.

6. Heard learned counsel for the parties and perused the record.

7. Learned counsel for the appellant contended that the learned Single Judge has overlooked the fact that the Management had acted wholly reasonably, fairly and rationally in appointing the respondent nos. 3 & 4 as Vice Principals. It was further contended that the learned Single Judge erred in holding that the Uttaranchal Government Servants (Criterion for recruitment by Promotion) Rules 2004 {hereinafter referred as 'promotion Rules 2004'} were applicable to the case in hand. It was further contended that the Promotion Rules 2004 were not applicable in this case because the respondent nos.1, 3 & 4 are not government servants. The BHEL Education Management Board is an autonomous body registered under the Societies Registration Act. The institutions run by the BHEL are private and unaided schools. It was further contended that the Promotion Rules 2004 were not applicable to the case of petitioner. Learned counsel for the petitioner conceded that the Promotion Rules 2004, which have been referred in the impugned judgment, are not applicable in this case. It is clear from the

record that the institutions did not get any recurring and non-recurring grant from the Central or State Government. Thus, the institutions managed by the BHEL Education Management Board are private and un-aided. Promotion Rules 2004 framed by the Government are applicable to the teacher of the government schools. The institution, in which the petitioner and respondent nos.3 & 4 had been teaching, was a private institution. The petitioner as well as the respondent nos.3 & 4 were not the government servants. Thus, the learned Single Judge has erred in holding that the Promotion Rules 2004 framed by the Government of Uttaranchal were applicable in this case. Learned counsel for the appellant further contended that the post of Vice Principal run by the appellant is not a promotional post. The B.H.E.L. Education Management Board had its own Rules regarding the condition of service. The services of the petitioner and respondent nos.3 & 4 are governed by the BHEL Educational Management Board Conditions of Service (Teaching & Non-Teaching Staff) Rules. Rule 2.12 & 2.14 of the said Rules provides as under:-

> **2.12**:-Recruitment by Promotion.
> **2.12.1** Appointment to a post in any grade by promotion may be made from amongst the employees serving in posts in the next lower grade.
> **2.12.2** Every appointment by promotion shall be on the basis of individual's merit and record of service.
>
> **2.14**:- Appointments.
> **2.14.1** All appointments to be posts of teachers shall be made by the Managing Sub-Committee or President on the recommendations of the Board of Selection Committees constituted by it.
> **2.14.2** All appointments to the posts of teachers in ad-hoc / officiating capacity or in

leave arrangements shall be made by the Presidents of the Managing Committees out of a panel already approved by the Chairman / Co-Chairman.

2.14.3 All appointments to the posts of Principal, Headmaster and Headmistress shall be made by the Board in the manner indicated in Rule 2.14.1.

Provided that when any existing junior High School or High School is raised to the standards of High School or Higher Secondary school having XII standard, the posts of the Principals of so raised High School or Higher Secondary Schools shall be filled by inviting applications through a selection committee as referred to in rule 2.14.1. Due consideration will be pad to the qualifications, experience and service record of the existing incumbents of the Junior High School/High School.

2.14.6 All promotions to the higher grades/posts shall be strictly on the basis of merit, good record of service and eligibility as per requisite qualifications and experience.

8. Thus, the aforesaid Rules clearly provide that there is no post of vice Principal in the Institution. The post of Vice Principal cannot be said to be a promotional post. It was further pointed out by the learned counsel for the petitioner-Bikram Singh Chauhan that the petitioner had been retired from service after the age of superannuation and even in case the petition is allowed he would not get any pecuniary benefits. It is also admitted to the respondent nos.3 & 4 that the pay scale of the Vice Principal and the P.G. Teacher (Senior Scale) was the same and the petitioner was also getting the P.G. Teacher Senior Scale which the respondent nos.3 & 4 were getting. For the sake of arguments, it is assumed that the post of the Vice Principal was a promotional post. The appellant had categorically stated in para 14 of his counter affidavit that the Management

Committee acted reasonably, fairly and rationally in appointing the respondent nos.3 & 4 as Vice Principal. Respondent nos.3 & 4 were appointed on the post of Vice Principal only after the interview was conducted by a board consisting of Chairman, Co-Chairman and the Secretary of the BHEL. Besides it, there was one Expert, who was Registrar, Gurukul Kangri University. It is not disputed that the petitioner-Bikram Singh Chauhan had also appeared before the interview board. The appellant had also filed the assessment sheet prepared by the interview board as CA-4 to the counter affidavit. The interview board found respondent nos.3 & 4 to be superior to the petitioner and accordingly the respondent nos.3 & 4 were appointed on the post of Vice Principals.

9. It is well settled position of law that the result of interview test on merits can not be successfully challenged by a candidate who takes a chance to get selected at the interview and who ultimately finds himself to be unsuccessful. It is also to be kept in mind that the court cannot reassess the relative merits of the candidates concerned who had been assessed at the oral interview. Therefore, the assessment on merits as made by such an expert committee cannot be brought in challenge only on the ground that the assessment was not proper or justified. It is pertinent to mention here that the respondent no.3 & 4 were more meritorious than the petitioner-Bikram Singh Chauhan. The respondent no.1 is possessed of only M.A. Degree, whereas the respondent no.3 is M.A.(EnglisH), L.T., M.Ed., Ph.D. and the respondent no.4 is M.Sc. (Chemistry), B.Ed.

10. In the case of **Om Prakash Shukla Vs Akhilesh Kumar Shukla and others A.I.R. 1986 S.C. 1043,** the petitioner appeared in the examination without any protest and when he found that he would not succeed in examination he filed a petition challenging the said examination. It was held that the High Court should not have granted any relief to such a petitioner. The Hon'ble Apex Court also held that if the petitioner appeared in the examination or in the selection process without any protest and when he did not succeed, he has no right to challenge the validity of the composition of the Selection Board or the selection process or the selection made by the Selection Committee. Further in the case of **Madan Lal & others Vs. State of J&K 1995 (3) S.C. 486**, the Hon'ble Apex Court examined the scope of the petitioners, who participated in the selection process about their locus standi to impugn the selection or the selection process or defect in the constitution of the selection committee on the ground that the selection committee was not duly constituted or the selection was not made correctly or there was some defect in the selection committee. The Hon'ble Apex Court while dealing with the said aspect observed as follows:-

> *"9. Before dealing with this contention, we must keep in view the salient fact that the petitioners as well as the contesting successful candidates being respondents concerned herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Upto this stage there is no dispute between the parties. The petitioners also appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged*

successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted. In the case of Om Prakash Shukla (supra) it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner."

11. In view of the foregoing discussion, we are of the considered view that the learned Single Judge erred in not considering that as the petitioner-Bikram Singh Chauhan had appeared at the interview board he cannot challenge the said selection. The selection had been made fairly on the basis of merits.

12. In view of the foregoing discussion, the appeal is liable to be allowed. The appeal is allowed. Accordingly, the writ petition. No.109(S/S)/2000 is dismissed. The impugned order dated 22.02.2006 passed in W.P. No.109(S/S)/2000 is hereby set aside. No order as to costs.

(J.C.S.Rawat, J.) (Rajeev Gupta, C.J.)

Dated 18.11.2006

LSR